

TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 45C. UNIFORM REGULATIONS
SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C-1.1 Applicability, scope and definitions

(a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.

(b) For the purpose of this subchapter, "licensee" shall mean any licensee, permittee, certificate holder or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board, committee, or other subunit of a board or committee located within the Division; or
3. The Legalized Games of Chance Control Commission.

13:45C-1.2 Licensee's duty to cooperate in investigative inquiries

(a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee's licensing agency into a licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.

(b) A licensee's failure to cooperate, absent good cause or bona fide claim of a privilege not identified in *N.J.A.C. 13:45C-1.5* as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of *N.J.S.A. 45:1-21(e)* or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to *N.J.S.A. 45:1-21(h)* or the agency's enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for disciplinary action including, but not limited to, suspension or revocation of license:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;
2. The failure to timely provide records related to licensee conduct;
3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;
4. The failure to timely respond or to provide information requested pursuant to a demand under *N.J.S.A. 45:1-18* or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;
5. The failure to answer any question pertinent to inquiry made pursuant to *N.J.S.A. 45:1-18* or other applicable law unless the response to said question is subject to a bona fide claim of privilege;

6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to *N.J.S.A. 45:1-18* or as may otherwise be provided by law; or

7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

(a) In any investigative inquiry conducted pursuant to *N.J.S.A. 45:1-18* or in any disciplinary proceeding conducted pursuant to *N.J.S.A. 45:1-21*, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

(b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to *N.J.S.A. 45:1-18* shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

(a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:

1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;

2. The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or

3. A Deputy Attorney General.

(b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees and agents of, and experts or other consultants retained by, the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.

(c) The statements, records or other information may be retained for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they may be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information may be returned to the patient, where appropriate.

